

JUDGE HORNBY'S SENTENCING PROCEDURES OUTLINE

[Ask the prosecutor if she/he has provided reasonable, accurate and timely notice of the proceeding to any victim(s) of the offense as required by the Justice for All Act of 2004. 18 U.S.C. § 3771.]

TO THE DEFENDANT [Explain purpose of hearing first]

- A. To sentence you, but first
- B. To hear from lawyers and you
- C. To make sure you have read and discussed Revised Presentence Report and Orders
- D. To be sure I know what is disputed and undisputed

TO THE LAWYER (Fed. R. Crim. P. 32(i)(1)):

- 1. Have you read and discussed with the defendant the Revised Presentence Report, as well as the court's Orders listing what is disputed and what is not disputed?
- 2. Did you have enough time in which to do so?

TO THE DEFENDANT (Fed. R. Crim. P. 32(i)(1)):

- 3. Have you used any drugs or alcohol in the last 24 hours?
- 4. Are you currently taking any medication?
- 5. Have you read and discussed the Revised Presentence Report, as well as the court's Orders listing what is disputed and what is not disputed with your lawyer?
- 6. Did you have enough time in which to do so?
- 7. Do you agree that the only remaining issues in dispute are **[describe]** and that the things I have listed as undisputed are in fact undisputed?

8. Is there any agreement you think you have about the sentence [aside from anything in the plea agreement]?
9. Is there any other matter you wish the court to decide in connection with imposing sentence?
10. **[If Information re prior convictions filed by Government]**
 - A. Do you affirm or deny that you were previously convicted as alleged in the Information?
 - B. Inform defendant that “any challenge to that conviction cannot be raised later.” 21 U.S.C. § 851(b); United States v. Romero-Carrion, 54 F.3d 15 (1st Cir. 1995) (If the conviction is more than five years old when the Information is filed, it may **not** be contested, § 851(e), unless identity is challenged. Romero-Carrion, 54 F.3d at 18 n.3).
11. Hear the defendant's lawyer (Fed. R. Crim. P. 32(i)(1)(C), (4)(A)(i)).
12. Hear the AUSA (Fed. R. Crim. P. 32(i)(1)(C), (4)(A)(iii)).
13. Hear the victims' allocution and ensure they were notified. (Justice for All Act). (Fed. R. Crim P. 32(i)(4)(B)).
14. Hear the defendant's allocution (Fed. R. Crim. P. 32(i)(4)(A)(ii)).

[Recess to consider arguments and evidence as necessary]

15. Accept plea agreement
 - if it involves dismissal of certain charges, make finding required by Guideline 6B1.2(a) (policy statement); see U.S. v. Plaza-Garcia, 914 F.2d 345, 348 (1st Cir. 1990).
16. Disclose any documents (e.g., letters) not in Presentence Report but that may be considered in sentencing, see U.S. v. Curran, 926 F.2d 59, 63-64 (1st Cir. 1991), and provide opportunity to respond.
17. Disclose any confidential information in Presentence Report (see Fed. R. Crim. P. 32(i)(1)(B) for method).

18. Make Advisory Guideline Findings [read Sentencing Memorandum].
19. Ask lawyers for any errors, corrections or objections not previously made.
20. Referring to factors listed in 18 U.S.C. § 3553(a), explain why will or will not follow Advisory Guidelines, and give intelligible reasons for sentence you are about to impose.
21. Have defendant stand and impose sentence.
22. Inquire if any objections to conditions of supervised release.
22. If self-reporting, continue bail and give warnings.
23. Advise of right to appeal sentence (Fed. R. App. P. 4(b); Fed. R. Crim. P. 32(j)(1)), and to have Clerk file notice and to proceed *in forma pauperis*.

[If appeal rights were waived in plea agreement]:

You have entered into a plea agreement that waives some/all of your rights to appeal the sentence. Such waivers are generally enforceable. If you believe your waiver is unenforceable, you can present that argument to the court of appeals.

24. If after not guilty plea, advise of right to appeal conviction and proceed *in forma pauperis* (Fed. R. Crim. P. 32(j)(1)) and to have Clerk file notice.

1/18/05